

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED

UNITED STATES DISTRICT COURT
LAS CRUCES, NEW MEXICO

OCT 28 2013

MATTHEW J. DYKMAN
CLERK

IAN GARLAND,

Petitioner,

v.

Civ. No. 13cv496 RB/GBW

CR 11-487 RB

UNITED STATES OF AMERICA,

Respondent.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND
RECOMMENDED DISPOSITION**

This matter comes before the Court on Petitioner's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody. *Doc. 1*. Petitioner argued that his trial counsel was ineffective for the following reasons: counsel advised Petitioner to plead guilty to aiding and abetting and conspiracy when, in fact, Petitioner consistently denied having the requisite *mens rea*, and the government's evidence on these charges was "weak"; counsel improperly advised Petitioner to stipulate to certain sentencing enhancements; and counsel failed to object to an erroneous assessment of Petitioner's base level offense in his presentence investigation report (PSR). *Id.* Petitioner requested both an evidentiary hearing and a resentencing hearing. *Id.* The government conceded that an error had been made in calculating

Petitioner's base level offense in the PSR, and stated that it did "not oppose granting Movant's requested relief" with regard to this claim. *Doc. 12* at 2.

The Magistrate Judge filed his Proposed Findings and Recommended Disposition (PFRD) on October 7, 2013. *Doc. 19*. He recommended denying Petitioner's first two claims as meritless. As to the third claim, that Petitioner's trial counsel was ineffective for failing to object to the erroneous calculation of his base level offense, the Magistrate Judge recommended granting Petitioner's motion and scheduling a new sentencing hearing. *Id.* at 13.

On October 23, 2013, Petitioner's counsel filed a Notice of Completion of Briefing which indicated that Plaintiff would not be filing any objections to the PFRD. *Doc. 20*. On October 24, 2013, Petitioner filed a *pro se* pleading presenting general objections to the PFRD. *Doc. 21*. Following the Tenth Circuit, this Court does not accept *pro se* filings from parties that are represented by counsel. D.N.M.LR-Civ. 83.5; *see United States v. Hildreth*, 485 F.3d 1120, 1125 (10th Cir. 2007). Consequently, the Court will disregard Petitioner's *pro se* objections.

Thus, neither party has properly filed objections to the PFRD. Upon review of the record, I concur with the Magistrate Judge's findings and recommendations.

Wherefore, IT IS HEREBY ORDERED that the Magistrate Judge's Proposed Findings and Recommended Disposition, *doc. 19*, is ADOPTED. Petitioner's first two claims are DISMISSED with prejudice, and Petitioner's third claim is GRANTED.

Petitioner's Motion to Expedite Resentencing, *doc. 21*, is likewise GRANTED, and a new sentencing hearing will be set for Nov 25th, 2013 @ 9:00 AM.


UNITED STATES DISTRICT JUDGE